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September 26, 2024

Dr. Martin Pollio
Superintendent
Jefferson County Public Schools
VanHoose Education Center
3332 Newburg Road
Louisville, KY 40218
marty.pollio@jefferson.kyschools.us **Via Email Only**

Re: Compliance Review of Jefferson County Public Schools
Docket No. 03-14-5001

Dear Dr. Pollio:

This is to inform you of the resolution of this compliance review of Jefferson County Public Schools (JCPS), which we will refer to as the District, initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR), under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Section 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. Title VI authorizes OCR to periodically review the practices of recipients to determine whether they are complying with the laws OCR enforces. This compliance review investigated whether the District discriminates against African American students by disciplining them more frequently and more harshly than similarly-situated white students.

Summary of Concerns

OCR's review of District records raised a concern that similarly situated African American and white students were treated differently at the referral stage and the sanctioning stage of the discipline process during the time period OCR investigated. Persistent race disparities were noted across all years for which OCR reviewed such data. For example, African American students were approximately three times more likely than white students to receive out-of-school suspension (OSS) at least once in a given school year, and similarly so for the high-frequency offenses that OCR focused on in this review. OCR also identified a difference in imposition of discipline for African American students compared to white students who had similar discipline histories; specifically, African American students were more likely than white students to receive OSS for first-time offenses overall. OCR also noted that the District's recordkeeping regarding student disciplinary dispositions, while improved in some ways over the course of this compliance review, still did not provide enough detail to determine whether discipline was being administered in a nondiscriminatory manner, as required by Title VI.

OCR observed the District's elimination, over the course of this review, of certain offenses allowing for a high degree of subjective judgment by staff tasked with imposing discipline, such as Disruptive Behavior, Failure to Obey Staff, and Excessive Noise, and that Districtwide data did not indicate, on average for all offenses, that OSS assigned to similarly situated African American and white students differed in length in a significant way. However, this was not the case for the length of alternative school placements, which on average disfavored African American students. Moreover, OCR's discipline file reviews and interviews indicated that staff would benefit from further guidance in equitably categorizing behavior for referral purposes, determining appropriate consequences, and documenting such determinations. OCR identified, for example, several individual instances of African American and white students with the same or similar discipline history who appear to have been disciplined differently for the same or similar offenses, in a manner that disfavored African American students. These repeated instances raised a concern that factors other than differences in behavior between African American and white students, possibly including racial bias, could be influencing disciplinary decisions.

During the course of OCR's investigation, the District requested to resolve the compliance review under Section 302 of OCR's *Case Processing Manual* (CPM). Pursuant to Section 302, OCR may resolve issues under investigation when the recipient expresses an interest in resolving the issues, and OCR determines it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. OCR determined that proceeding under Section 302 would be appropriate.

The relevant facts, legal standards, and conclusions are summarized below.

Methodology

OCR has been collecting information from the District from 2014 to 2024, reviewing the District's disciplinary policies and procedures as well as changes therein in response to OCR's technical assistance, and analyzing data and student discipline files provided by the District (a total of approximately 190 documents, including various spreadsheets and about 2,100 pages of text). OCR interviewed District administration staff as well as administrative staff and students at a high school and a middle school. OCR selected these schools for review based on disciplinary and enrollment data as reasonably representative of the District as a whole. Specifically, for the 2021-2022 school year (SY) the high school was suburban with African American students constituting 52% and white students constituting 39% of the enrollment, and the middle school was urban with African American students constituting 32% and white students constituting 47% of the enrollment. Also, the data for both schools for the 2021-2022 SY showed overall disproportionate discipline of African American students across a wide range of offenses. Regarding OCR's analysis of the District's discipline data, a disparity is considered to be statistically significant when chance alone is unlikely to explain the difference. For all tests, OCR used a p-value threshold (confidence interval) of 0.05 to establish statistical significance.

Over the course of this review, District officials indicated in various interviews that there was, in the District's opinion, no ready method for getting a full count of what the District labeled "disciplinary dispositions," for those referrals that resulted in more than one disposition. The

data analysis herein relied on the primary disciplinary disposition listed for those referrals that had more than one.

Legal Standards

The Title VI regulation, at 34 C.F.R. §100.3(a), states that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance. Sections 100.3(b)(1)(i)-(vi) further state, in relevant part, that a recipient may not, on the ground of race, color or national origin, deny an individual any service or benefit provided under the program; provide any service or benefit to an individual which is different, or provided in a different manner, from that provided to others under the program; subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the program; restrict an individual in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program; treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition to be provided any service or other benefit under the program; or deny an individual an opportunity to participate in a program through the provision of services or otherwise afford an individual an opportunity to do so which is different from that afforded others under the program. The regulation, at 34 C.F.R. §100.3(b)(2), also provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

Title VI protects students even if a recipient contracts or arranges for entities, over which it exercises some control, to be responsible for aspects of a school's student safety or student discipline program. Recipients cannot divest themselves of responsibility for the non-discriminatory administration of school safety and student discipline by relying on school resource officers, school district police officers, contracted law enforcement companies or other contractors or law enforcement personnel over whom the school can exercise some control.

Under the Title VI regulation, at 34 C.F.R. § 100.6(b), a school district must keep timely, complete, and accurate records so that the Department may be able to ascertain whether the school district has complied or is complying with Title VI.

Summary of Evidence Obtained

The District is the largest school system in Kentucky and includes the city of Louisville. The District enrolls approximately 96,000 students as of the 2022-2023 school year. The District's student population is approximately 37% white, 37% Black or African American (OCR will use the latter term herein), 15% Hispanic, and 11% other racial groups. The District has 89 elementary schools, 22 middle schools, and 18 high schools, as well as other schools with specific functions, such as alternative education centers, a few schools with a very wide range of grade levels, preschools, and residential care facilities.

The District is governed by a Board of Education (Board) consisting of seven members, and is led by the Superintendent. The Board adopts Districtwide disciplinary policies, identified as a "code" for many years and in more recent years as a "handbook," that are implemented by the Superintendent. The Superintendent's Office includes the Chief Equity Officer and the Chief of Accountability, Research and Systems Improvement ("Chief of Accountability"). The District also employs an Assistant Superintendent of Culture and Climate.

Disciplinary Policies in the 2013-2014 SY

At the outset of this review, the Districtwide student disciplinary policies were contained in the "2013-2014 Code of Acceptable Behavior and Discipline and the Student Bill of Rights" (the "2014 Code" or "Code"). The Code identified 21 behavior violations, with a range of up to six kinds of consequences, from "In-School Discipline Measures" to Expulsion.

In-School Discipline Measures included assignment to after-school detention, as well as in-school suspension (ISS). OCR used the term ISS herein to refer to District sanctions that removed students from educational services while remaining in school, such as the In-School Adjustment Program (ISAP) or the Positive Action Center (PAC). OCR did not examine expulsions because District officials consistently indicated over the course of the review that this sanction was not used and was only listed as an option because doing so was required by Kentucky state law. OCR found no evidence to the contrary.

While some behaviors in the Code had specific and objective definitions, e.g., "Gambling—games of chance or skill for money or profit"; other relatively common behaviors had more subjective or even circular definitions, e.g., "Deliberate disruption—any deliberate action by the student that results in serious disruption of the educational process or any school-sponsored event . . ."; while yet others were not defined at all, such as "Profanity/Vulgarity." As for staff discretion in imposing consequences, aside from providing a chart applicable to elementary school students, the Code generally provided only broad guidance.

The 2014 Code, and the District's subsequent student discipline policies, also stated that for elementary school students, "Suspension . . . shall be considered only in exceptional cases where there are safety issues for the child or others." Various District officials indicated in their OCR interviews that this approach is required for "primary school students" by Kentucky state law. Go to state law. As discussed below regarding discipline data, OCR noted that the OSS rate for elementary school students in the District, regardless of race, was accordingly much lower than that for middle and high school students.

Alternative Programs and Contacts with Law Enforcement

The 2014 Code defined "Alternative Placement Offenses," the handling of which was by the District's now-defunct Safe and Drug-Free Schools/Student Relations Department (Department), as including offenses such as striking students or school personnel, trafficking/distributing drugs/alcohol, sexual assault, and possessing or transferring a deadly weapon. According to the Code, "Law enforcement officials will be notified [of such offenses] by local school administration, in accordance with the Police Memorandum of Agreement" (MOU). More generally, the 2014 Code provided regarding contacts with law enforcement, "When a student

violates a law, school administrators will notify the appropriate law enforcement official. Prosecution and adjudication of criminal violations shall occur separately from the administration of school procedures."

The Code also provided that "[s]tudents who fail to control their behavior after receiving repeated disciplinary measures from the school" would be "suspended to" the Department "so that their cases may be expedited for placement in alternative programs." While the Code provided that "[a]lternative programs help students improve academic skills, become more self-sufficient, and develop self-control," and such placements could only be made by a central office administrator, the Code provided no specific guidance to staff on how long a student was to remain in an alternative school/program. Moreover, OCR noted in interviews with relevant District officials in, e.g., 2016, that the discipline data spreadsheets the District provided were not a coherent means for OCR to understand the process and rationale for the placement of an individual student in an alternative program, or exit therefrom, so it was unclear how the District was able to do so, in order to identify and address possible different treatment based on race (see Alternative Program Data, below).

According to OCR interviews with senior District officials, as well as related documentation, up until about the end of the 2018-2019 SY, the District contracted with several local law enforcement agencies to provide school resource officer (SRO) services. The MOUs with these agencies indicated that "[t]he [SRO] *shall not* be used as a school disciplinarian" and "*cannot* enforce school rules and policies" (emphasis in the original); and "[i]f [a school] principal believes an incident is a violation of law, they may contact the [SRO] to see if law enforcement action is needed."

Revisions to the Student Discipline Process

OCR concluded based on review of documents provided by the District, that the 2014 Code was not subject to any major revisions over at least the next two school years (i.e., 2014-2015 and 2015-2016). However, senior District staff that OCR interviewed in this period consistently expressed concern about addressing what they themselves characterized as disproportionate discipline of African American students versus white students. In the spring of 2016, OCR learned that the District was being investigated by the Kentucky Department of Education (KDE) for various data reporting concerns. This investigation evolved into a comprehensive audit of the District and its management, resulting in KDE findings in 2018, a settlement agreement between KDE and the District, and a conclusion of KDE monitoring of the District in 2020. Go to management audit report. While the KDE audit was not focused on Districtwide discipline, there was some reference in it to certain kinds of student discipline and data reporting concerns, as well as more generally to racial equity issues.

In May 2018, as the KDE audit was approaching settlement, the Board adopted a "District Commitment to Racial Educational Equity" policy that among other things "acknowledges persistent gaps in [. . .] disciplinary outcomes among student groups based on race and ethnicity" and "commits to remedying" such (also referred to by the District as "the system-wide plan"). OCR noted that the system-wide plan referenced elements such as use of "research or evidence-based strategies and practices," stakeholder input, and ongoing data collection and monitoring, as well as "adopting alternative discipline practices." Various administrators at both the District and

school level indicated in their 2024 interviews with OCR that, as of the 2023-2024 SY, implementation of the system-wide plan continued. However, it was unclear to OCR both from these interviews and from review of the system-wide plan, what measures would be taken by the District if concerns with disproportionate discipline were found.

Disciplinary Policies in the 2021-2022 SY

OCR learned from interviews with various senior District administrators, as well as documentation provided by the District, that the Code went through extensive revisions, resulting in a Student Support and Behavior Intervention Handbook. OCR focused on the 2021-2022 SY edition (the "2022 Handbook" or "Handbook"), noting that it had been in place since at least the 2018-2019 SY with no major changes, and included, as the Code had, a Student Bill of Rights.

The 2022 Handbook identifies several specific "evidence-based practices to support student behavior," in the categories of Classroom and Teacher-Based Supports, Schoolwide Supports, and Bus and Transportation Support, as well as the goal of "addressing the causes of inappropriate behavior, resolving conflict, meeting students' needs, and keeping students in school." Several practices are accompanied by reference to additional resources. Go to Culture & Climate resources. Also, the 2022 Handbook provides a comparatively detailed description of the District's "Progressive Interventions and Consequences" approach to discipline.

The 2022 Handbook provides for four levels of disciplinary consequences, and in an Interventions and Consequences for Students K-12 chart provides for each level a general description/definition, as well as a non-exhaustive list of examples of behaviors and consequences. Specifically, the chart describes consequences by level:

- Level 1 violations "represent minor disruptions to the classroom environment" and should "typically" be handled with "classroom-level interventions," but repeated violations "require[] a parent/teacher conference, a conference with the counselor, and/or a conference with an administrator."
- Level 2 violations "represent acts whose frequency or seriousness disrupt the learning environment of the school" and so "always result in the involvement of school administration. [. . . T]he goal is to correct the behavior by stressing its seriousness while keeping the student in school."
- Level 3 violations "represent acts against a person(s) or property that indirectly endanger the health or safety of others in the school" and thus "may result in the short-term removal of the student from the school environment because of the severe nature of the behavior. Consequence options may include combinations of interventions and consequences."
- Level 4 violations "represent acts against a person(s) or property that may directly or indirectly endanger the health or safety of others" and so "always result in administrative action, possible notification of appropriate law enforcement authorities, and immediate removal of the student from school."

The 2022 Handbook contains three Behavior Codes charts, one each for "Grades Pre-K-3" (for which there are no Level 4 consequences), "Grades 4-5," and "Grades 6-12." The three charts each include a total of approximately 62 behaviors in 50 categories. Nineteen of the 50

categories contain offenses that are marked with an asterisk, indicating the offense is also "a law violation and reported to KDE." Unlike the 2014 Code, the 2022 Handbook provides a complete set of "Behavior Code Definitions" that range, by offense, in length from one sentence to several paragraphs. Almost all offenses could result in at least two levels of consequence. However, beyond the level-based general guidance described above, the 2022 Handbook provides no specific additional guidance to staff in selecting the appropriate level of consequence.

OCR reviewed how the Behavior Code Definitions, as well as the Behavior Codes chart for Grades 6-12, addressed a sample of four of the nine most high-frequency offenses in the 2021-2022 SY: Horseplay; Talking out in class; Violation of Personal Electronic/Telecommunication Device Policy; and Profanity/Vulgarity toward student or staff (the "four offenses").

The Behavior Code Definition for "Horseplay," which can result in Level 1 or Level 2 consequences, is "engaged in roughhousing, pushing, running, excessive play, etc., that are not appropriate or safe in the school environment." The then Assistant Superintendent of Culture and Climate explained in her OCR interview in February 2022 that Horseplay was added to the District's list of offenses (i.e., it was not part of the 2014 Code) because "we felt [it] would help . . . capture a physical incident but something that is not serious. We found staff were coding [such conduct incorrectly] as 'Fighting' or 'Physical Assault' because they didn't have another code to use." By comparison, the Behavior Code Definition for "Fighting—student to student," which can result in consequences at all four levels, is: "The use of physical violence between two students or the use of violence by a student on another person (excludes verbal confrontations, threats, intimidation, and other encounters). Administrators may use professional judgment in cases where the investigation yields a clear aggressor/initiator and may differentiate consequences accordingly."

The Behavior Code Definition for "Talking out in class," which can result in Level 1 or Level 2 consequences, is "[r]epetitive talking at inappropriate times or discussing irrelevant content in a manner disruptive to the learning process."

The Behavior Code Definition for "Violation of Personal Electronic/Telecommunication Device Policy," which can result in Level 1 or Level 2 consequences, includes, e.g., use of a device for academic "cheating," violating the "confidentiality or privacy rights of another individual," or "promot[ing] illegal activity[.]"

The Behavior Code Definition for "Profanity/Vulgarity toward student or staff," which can result in Level 1, Level 2, or Level 3 consequences, is "[s]wearing, cursing, or making obscene gestures specifically targeting school students or personnel."

Alternative Programs and Contacts with Law Enforcement

There is little substantive change to the "Alternative Placement" language in the 2022 Handbook when compared to the 2014 Code, except the process is now overseen by Student Relations, and the following direction was added, "School administrators will implement interventions and/or consequences with all students in an effort to help them be successful."

The District informed OCR that in 2019 the Board voted to discontinue contracting for SROs from local law enforcement. In 2022, the District adopted Board Policy 02.31 regarding School

Safety Officers (SSOs). Per the Policy, SSOs are to be employed directly by the District. The Policy sets forth, in relevant part: "The District's commitment to achieving racial equity through awareness, action, and accountability [. . . .] A central goal of implementing this system of strategies to develop positive relationships in schools is reducing the number of students who become engaged with the juvenile justice and criminal justice systems."

According to the Policy "[t]he purpose of the program is not to enforce or administer matters of school discipline and student conduct," but, e.g., to "promote and foster a safe environment in schools" by having SSOs "work as a team with administrators and teachers to develop strategies to protect and support all children so they can reach their fullest potential."

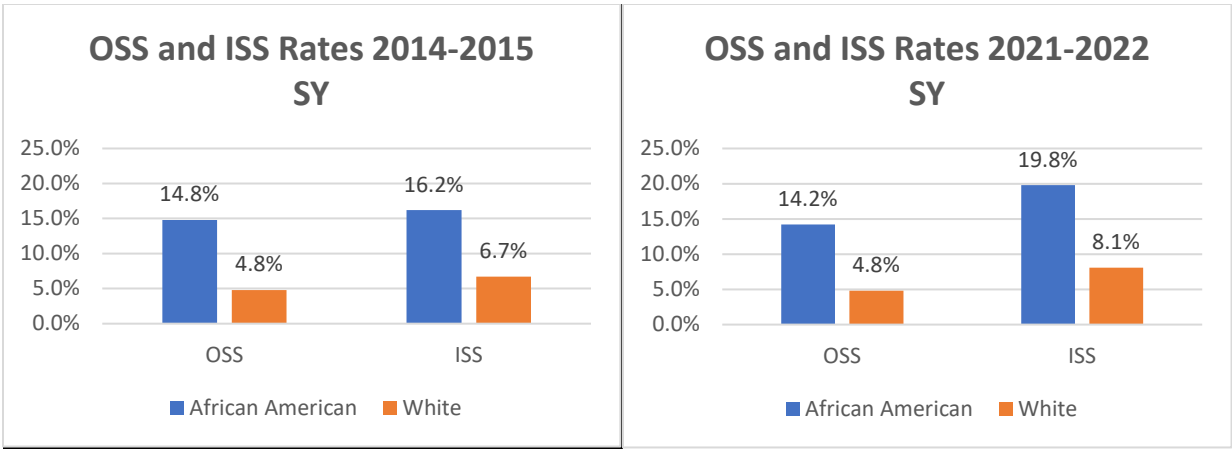
Since 2019 the District has had no regular law enforcement presence on its campuses. As of February 2024, the District indicated it was still in the implementation phase of hiring due to nationwide police shortages.

Comparing 2014-2015 SY and 2021-2022 SY Discipline Data

OCR analyzed discipline data from the 2014-2015 school year, using a data set provided by the District. In that year, the District's enrollment of over 96,000 students was approximately 48% white, 36% African American, 9% Hispanic, 3% multiracial, 4% Asian, and less than one percent American Indian or Native Hawaiian/Pacific Islander. OCR used the data set to calculate OSS and ISS rates for African American and white students by dividing the number of students of a particular race who were suspended at least once, by that race's enrollment. The District's data set contained 106,313 disciplinary referrals, with a total of 21,500 students receiving at least one referral.

OCR also analyzed discipline data from the 2021-2022 school year, using a data set provided by the District. In that year, the District's enrollment of over 95,000 students was approximately 39% white, 37% African American, 13% Hispanic, 6% multiracial, 5% Asian, and less than one percent American Indian or Native Hawaiian/Pacific Islander. The District's data set contained 130,987 disciplinary referrals, with a total of 24,032 students receiving at least one referral. The difference between the rates for African American and white students was, for both school years, statistically significant for both OSS and ISS, indicating that African American students consistently received both types of exclusionary discipline out of proportion to their enrollment.

In this seven-year period, the District reduced slightly the OSS rate for African American students while that for white students held steady, but the rate of ISS increased for both groups, as shown in the charts below.

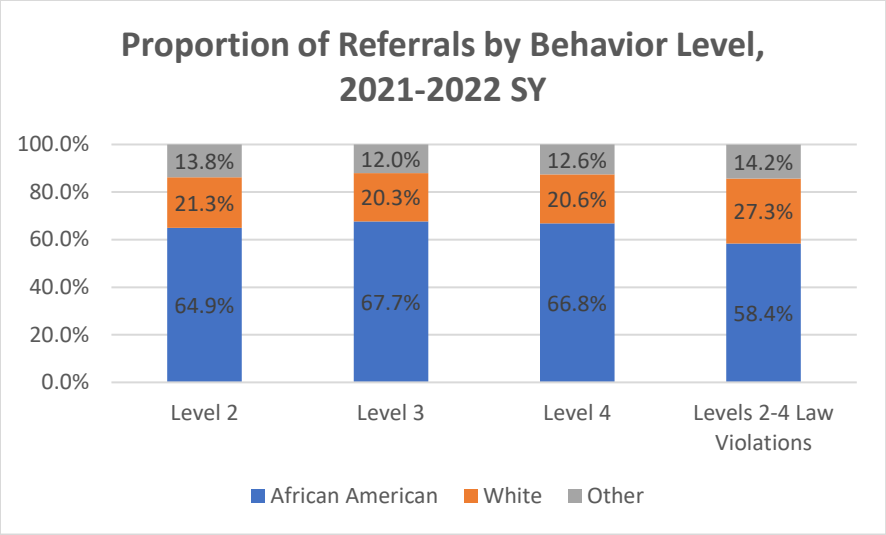


Turning to a focus on the 2021-2022 school year, OCR examined in more depth whether African American students were more likely to be referred for discipline than white students and, once referred, whether African American students were sanctioned more harshly than white students. OCR found, for example, looking at all disciplinary referrals that resulted in OSS, the average length of suspension for African American and white students was approximately equal, at around 2.5 days. As needed, OCR categorized referrals based on the highest possible consequence level, e.g., a referral for behavior that may result in a Level 2 or Level 3 consequence would be categorized as a Level 3.

Referral Data

Districtwide, 55% of African American students received a disciplinary referral at least once, compared to 27.1% of white students. African American students were referred at higher rates than white students at all school levels (elementary, middle, and high) to a statistically significant degree; this was also true for the rates at which African American students received OSS and ISS compared to white students, consistent with the 2021-2022 SY Discipline Data above. The referral rate for African American students was particularly high at the middle school level, where 57.6% of African American students were referred at least once compared to 25.8% of white students.

OCR also analyzed referrals according to the behavior levels associated with each in the grades 6-12 Behavior Codes chart. As reflected in the bar chart below, OCR found that African American students received 64.9% of referrals for Level 2 behaviors, 67.7% of referrals for Level 3 behaviors, and 66.8% of Level 4 behaviors; in contrast, African American students received 58.4% of referrals for Levels 2-4 behaviors that, according to the 2022 Handbook, were also law violations ("Levels 2-4 law violations"). The gap (i.e., percentage point difference) between the proportion of referrals given to African American and white students was 43.6 percentage points for Level 2 behaviors, 47.4 percentage points for Level 3 behaviors, and 46.2 percentage points for Level 4 behaviors; in contrast, it was 31.1 percentage points for Levels 2-4 law violations.



Referral and Sanctioning Data for Select Offenses

OCR compared District referral data for the more objective Violation of Personal Electronic/Telecommunication Device Policy (including District referral data for the similarly defined offense of Inappropriate use of a mobile device), with referral data for the more subjective Horseplay, Profanity/Vulgarity toward student or staff (including District data for the similarly defined offense of Profanity/Vulgarity) and Talking out in class. The other five high-frequency offenses: Fighting – student to student, Striking – student, Leaving class without permission, Nonattendance to class/Cutting class, and Unexcused tardiness to class, showed a disproportionate referral and sanctioning pattern consistent with the offenses OCR focused on herein. The offense of Fighting – student to student was also included when conducting file reviews and interviews.

The African American proportion of all referrals in the 2021-2022 SY was lowest for Violation of Personal Electronic/Telecommunication Device Policy, at 55.5%. For the other three, African American students received 63.1% of all referrals for Talking out in class, 68.8% of referrals for Profanity/Vulgarity toward student or staff, and 69% for Horseplay. Turning to unique student counts, African American students referred at least once were from 2.5 times (Talking out in class) to 4 times (Horseplay) more likely than white students referred at least once, to receive OSS. Also, African American students referred at least once were from 2.3 times (Violation of Personal Electronic/Telecommunication Device Policy) to 3.4 times (Horseplay) more likely than white students referred at least once, to receive ISS. These differences were all statistically significant.

First-Time Offender (FTO) Sanction Data

OCR analyzed the sanctions of OSS and ISS given to African American and white students for their first disciplinary referral of the 2021-2022 SY (thereby controlling for disciplinary history, which can affect sanctioning), to determine whether African American FTOs were more likely to be suspended than white FTOs. Districtwide, African American FTOs were more likely to receive OSS than white FTOs, and the latter to receive ISS than African American FTOs, to a statistically significant degree.

Given the relatively low incidence of FTOs receiving OSS at the elementary level, OCR focused on the middle and high school levels in its analysis of OSS and ISS rates for African American and white FTOs at behavior levels 2, 3, and 4, as wells as for Levels 2-4 law violations. For this analysis and the analysis of the four offenses to follow, OCR only included each student's first referral of the school year, rather than their first referral for a particular offense or level of offense. The statistically significant disparities were as follows: for Level 2 offenses, ISS for African American FTOs at the high schools and white FTOs at the middle schools; and for Level 4 offenses, OSS (and also OSS for Levels 2-4 Law Violations) for African American FTOs and ISS for white FTOs at the high schools.

Alternative Program Data

In the 2021-2022 SY, a total of 176 African American students and 37 white students were assigned to a behavior support alternative school at least once. To investigate further, OCR first calculated alternative placement program rates for students who received disciplinary referrals (i.e., student counts) and determined that African American students were about 2.2 times as likely as white students to be assigned to an alternative program at least once. This difference was statistically significant, as was the difference in the average length of placement in alternative programs for the first time in the school year: 65.9 days for African American students compared to 53.3 days for white students. OCR next calculated the likelihood of individual disciplinary referrals resulting in alternative program placement (i.e., incident counts rather than student counts). OCR determined that referrals of African American students were twice as likely as referrals of white students to result in alternative program placements. This difference was also statistically significant.

Law Enforcement Contact Data

In the 2021-2022 SY, the District contacted law enforcement at least once for 33 African American students and 4 white students. To investigate further, while also noting the small sample size, OCR first calculated law enforcement contact rates for students who received disciplinary referrals (i.e., student counts). OCR determined that for students who received disciplinary referrals, African American students were over four times as likely as white students to be referred to law enforcement at least once; this difference was statistically significant. OCR next calculated the likelihood of individual disciplinary referrals resulting in a referral to law enforcement (i.e., incident counts rather than student counts). This was four times more likely for African American students than white students, and this difference was also statistically significant.

Earlier Discipline Data

Earlier in this compliance review, OCR analyzed the District's discipline data for both the 2013-2014 and the 2014-2015 school years. OCR's findings were similar to the findings for the 2021-2022 SY, as illustrated by the comparison with the OSS and ISS data from the 2014-2015 SY, discussed above. OCR noted that the District had by the time of the 2019-2020 Student Support and Behavior Intervention Handbook (the "2020 Handbook") dropped the subjective offense of Disruptive Behavior, which as of the 2014-2015 SY had subjected African American students referred at least once for this offense to a likelihood of OSS 4.7 times that of white students so

referred. The District had also dropped the subjective offense of Failure to Obey Staff by the time of the 2020 Handbook, which as of the 2014-2015 SY had subjected African American students referred at least once for this offense to a likelihood of OSS 3.4 times that of white students so referred. The 2020 Handbook did include a subjective offense not present in the 2014 Code, Excessive Noise, but OCR confirmed – as noted by various District staff that OCR interviewed – that by the following year's Handbook (2020-2021 SY), this offense was eliminated. The then Assistant Superintendent of Climate and Culture explained in an interview with OCR in February 2022, "Over the past 5 years or so the District has really tried to eradicate anything in the code that was too discretionary, too subjective," and gave Disruptive Behavior and Failure to Obey Staff as specific examples; the Chief Equity Officer in his January 2024 OCR interview similarly highlighted the elimination of these two offenses.

Regarding alternative program data, because of District recordkeeping issues at the time as noted above, OCR could not make a direct comparison from either the 2013-2014 or 2014-2015 school years with the 2021-2022 SY, as to either the rate or length of alternative program placements. However, OCR analyzed District data from the 2013-2014 SY regarding FTOs and found that African American students were about 2.5 times as likely as white students to be recommended for an alternative placement; this difference was statistically significant.

Student Discipline File Reviews, Staff Interviews, and Student Focus Groups

OCR, through its review of discipline files from the 2021-2022 SY at a District middle school and high school (see Methodology, above), as well as reference to related disciplinary dispositions data otherwise provided by the District, identified individual examples of African American and white students with the same or similar discipline history who appeared to have been disciplined differently for the same or similar behaviors; and African American students disciplined for a behavior that was not adequately described or was mislabeled, in contrast to similarly situated white students.

Incidents resulting in ISS and OSS

For example, in the 2021-2022 SY, regarding the offense of Talking out in class, an African American middle school student received nearly a full day of ISS (Team Time Out), which was explained on the District's Behavior Detail Report (Report) only as "Consistent failure to meet team and school expectations," with no indication of how this met the definition of the named behavior in the 2022 Handbook. It was the student's first discipline referral of the school year. By contrast, a white student at the same school received as a disposition for this behavior only the writing of a restorative essay (apparently a type of Restorative Conversation), when the student's behavior according to the Report included not only "incessant talking out of turn," but also "walking around the class and repeatedly ignoring the teacher's request to return to his seat," and it was this student's second referral of the school year. There was no indication on the African American student's Report that they were offered any restorative options. When OCR presented this comparative scenario in an interview with the [redacted content] in January 2024, they responded, "I would have questions for individual teachers […] and the [redacted content] in a situation like that[.] [For example,] why one [student] was offered one restorative strategy and the other not." The [redacted content] also stated, "I would say we need more training on this […,] if I saw this, I would intervene." With respect to the possibility of using restorative

strategies in discipline more generally, the [redacted content] said, "We are at a low level at implementing that. Some staff have been trained, some not. [. . .] Some teachers are good at it." The [redacted content] also described their school's efforts to implement the system-wide plan described above. Two representatives from the stakeholder group Citizens of Louisville Organized and United Together (CLOUT), in a February 2024 interview with OCR, indicated that the group has been "working with the District" on "restorative practices" and noted in that in various ways, "The Superintendent has been helpful."

In another example from OCR's review of student discipline files from the middle school in the 2021-2022 SY, regarding Violation of Personal Electronic/Telecommunication Device Policy, an African American student received a quarter-day of ISS (ISAP) for behavior explained in the Report as "Continually on cell phone after warnings/redirections." It was this student's first discipline referral of the school year. By contrast, a white student at the same school received as a disposition for the same offense a parent/guardian conference, when the behavior according to the Report included not only that the student "was told several times not to play loud music on [their] phone," but also, "[The student] ignored the assistant when [they] told him [they were] going to report [the student] to the administrator. [The student] said, 'Snitches get stitches'"; in other words, the student made a threat of physical violence against a staff member. It was this student's third referral of the school year.

As another example from the 2021-2022 SY, two African American middle school students each received two days of OSS for the behavior of Fighting—student to student, but their Reports, as well as the notice to their respective parents or guardians, only referenced the name of the behavior, with no further detail. OCR did not find this to be the case for any similarly situated white students at the school. When OCR presented this comparative scenario in the interview with the [redacted content], as well as the possibly miscategorized Talking out in class example above, they responded, "We have brought in a [redacted content] this year [(i.e., the 2023-2024 SY) and] provided training for putting those narrative details in. I have explained to [redacted content] [administrative] team, we need to have enough detail in the narrative to understand what happened. This is [also] beneficial for the family, [. . .] to understand what happened[.]" OCR noted a similar concern with respect to four African American high school students subject to discipline in the 2021-2022 SY.

Regarding the high school in the 2021-2022 SY and the offense of Horseplay, OCR's file review indicated that a white student in their first discipline referral of the school year [redacted content] The white student was then allowed to apologize to the teacher, with no further consequence. By contrast, two African American students, also in their first discipline referrals of the school year, were [redacted content]. There was no other misconduct noted in their Reports, and yet each of these students was assigned a full day of ISS (ISAP). There was no indication in the discipline record that either was given the opportunity to apologize for their conduct, in lieu of being removed from the classroom. When OCR presented this comparative scenario in a January 2024 interview with the [redacted content], they responded, "Questions for me would be - were [the] other two students given opportunity to apologize as well?" This [redacted content] also described their school's efforts to implement the system-wide plan.

Alternative Placements

The Assistant Superintendent of Culture and Climate, in his January 2024 OCR interview, described the current process of referral for, placement in, and exit from behavior support alternative schools. He indicated that his office handles referrals for Level 4 behaviors exclusively (i.e., Level 3 or lesser behaviors do not qualify), to two behavior support alternative schools – Minor Daniels Academy (MDA; serving both middle and high school students) and "Breck" (Breckinridge Metropolitan High School). The AS described that one of the two student relations specialists in his office "has a meeting with the student and family to discuss the [referral] incident and determine the outcome" (i.e., whether the student will be placed at an alternative school or not); the family also meets with an MHP (mental health professional) in a separate meeting ("usually that same day"), and "they discuss any supports that may be available in the regular school. The student either gets referred to MDA or Breck or sent back to regular school." The AS also indicated that, as with any exclusionary discipline, separate procedures are followed as applicable for students with disabilities, per relevant Federal law. As to how the specialists make a placement decision, "They apply a matrix to determine whether to send [a] student to an alternative school or not [(Alternative Placement Matrix or Matrix)]. I try to take out subjectivity as much as possible. Sometimes they need to reach out to the school for additional information based on what the family said during the meeting. Otherwise, a decision is made at that meeting, and then [as applicable] we start to transition the student[.]" The AS noted, "At that meeting, we also go over the student handbook and discuss the ability to appeal." OCR reviewed the Alternative Placement Matrix, which contains eleven questions such as, "Within **this** school year, does the student have a history of repetitive poor choice making resulting in behavior referrals?" (emphasis in the original) and "Have ['behavior'] interventions been implemented ['with fidelity']" as well as "Has progressive discipline been utilized" at the school level?

The AS indicated in his interview that these alternative placement meetings typically happen "before the suspension is up, so [students] don't miss additional [instructional] days." OCR reviewed two student files for African American students receiving alternative placements in the 2021-2022 SY, and confirmed that only Level 4 behaviors were involved, and the files contained information consistent with the AS's description of the placement procedure, including reference to a "due process conference with parent[.]" When asked when parents or guardians can appeal the placement, the AS said, "Immediately; [we] often get appeals the day of or day after." When the AS was asked how his staff determines the length of an alternative placement, he said, "We have review periods based on the offense. Longer time at the alternative school if the offense is more severe." OCR noted, based on the two files, that a placement for a "Fighting" incident was 12 weeks, and for a "Theft" incident, 6 weeks. The AS indicated that these time periods were determined by the District versus, e.g., Kentucky state law. OCR noted that the Matrix provides no guidance on length of placement. As to the exit process, the AS indicated, "At the behavioral schools, there are personnel we collaborate with who keep track of who ha[s] met the time and behavior requirements. Who is ready to transition out."

OCR also reviewed the District's Narrative Descriptions for students receiving alternative placements in the 2021-2022 SY. The length of the placement was reflected in the District-provided spreadsheet as "Disciplinary Disposition Length (Days)"; no other data was provided in this regard on the spreadsheet. For example, an African American high school student received

an alternative placement of [redacted content]. By contrast, a white student at a different high school was described as [redacted content]. Neither the African American student nor the white student had any additional disciplinary referrals while in their alternative placements.

As another example from the 2021-2022 SY, an African American middle school student received an alternative placement of [redacted content]. By contrast, a white high school student received an alternative placement of [redacted content]. Each of the students had three additional disciplinary referrals during their alternative placements, with none for this or a similarly serious offense. OCR has not yet interviewed decision makers concerning these placements.

Focus Groups and Schoolwide Survey

OCR interviewed two focus groups, one each of middle school and high school students, in March 2024. Neither group provided information inconsistent with the District's disciplinary practices as otherwise investigated by OCR. The high school students mentioned a schoolwide survey, including a question about how students felt regarding student discipline at the school. OCR noted, however, that there were no discipline-specific questions in the District's annual Comprehensive School Survey for 2023, which asked students (as well as other District stakeholders) questions about, among other things, whether they "feel safe" in and around their school, as well as about their school's "Equity Environment."

Analysis

OCR found that at the referral stage, African American students were referred for discipline at higher rates than white students at all school levels. Furthermore, African American students received a higher share of referrals than their 37% share of enrollment in the 2021-2022 SY, at all offense levels and for each of the four offenses focused on in this review. However, OCR found that racial disparities in referrals narrowed for Levels 2-4 law violations, where referring staff would typically exercise less discretion when determining whether to refer students. In addition, when OCR analyzed referral disparities for the four offenses, Violation of Personal Electronic/Telecommunication Device Policy, arguably more objective than the other three, had the lowest disparity. The more subjective offense of Horseplay, on the other hand, had the highest disparity. These data raise a concern that racial bias could be contributing to referral disparities when staff exercise greater discretion in determining whether to make referrals. This concern was reinforced by OCR's review of student discipline files.

At the sanctioning stage, OCR identified differences in imposition of discipline for African American students compared to white students who had similar discipline histories and engaged in similar behaviors. OCR found that African American students were more likely than white students to receive OSS for first-time offenses overall, again suggesting that factors other than objective differences in behavior may be influencing sanctioning decisions. African American FTO students were also more likely to receive:

- ISS compared to white FTO students for Level 2 behaviors at the high school level;
- OSS compared to white FTO students for Level 4 behaviors at the high school level; and
- OSS compared to white FTO students for Levels 2-4 law violations at the high school level.

Regarding alternative program assignment, African American students who received discipline referrals were more likely to be assigned to alternative programs, and for a longer time period, than white students who received discipline referrals. OCR is concerned about possible different treatment with respect to the length of such placements for African American students, given that the District's records provided to OCR in the investigation to date, including Narrative Descriptions, did not include information explaining why some African American students received much lengthier placements than white students, for lesser misconduct, and the District's relevant matrix lacks any guidance in this regard. Regarding contacts with law enforcement, African American students who received discipline referrals were more likely to be referred to law enforcement than similarly situated white students who received discipline referrals. Again, this information suggested racial bias may be influencing alternative placement and law enforcement referral decisions.

Compared to the 2014 Code, the 2022 Handbook provides considerably more guidance to District staff in equitably categorizing behaviors for referral purposes and identifies a range of consequences, within a progressive interventions and consequences disciplinary framework. However, various concerns persist. The Handbook still provides little specific guidance to staff in selecting appropriate consequences, allowing for broad discretion that may contribute to disproportionate discipline. OCR's review of student discipline files from the 2021-2022 SY revealed, for example, regarding two students referred for the offense of Talking out in class, that a white student was allowed a restorative remedy, while an African American student, who unlike the white student had been referred under the specific offense for unclear reasons, was subject to nearly a full day of ISS. In another example, regarding three students referred for the offense of Horseplay, a white student was allowed to apologize to a teacher with no further consequence, while two African American students were each subject to a full day of ISS, with no indication that either was given the option to apologize. Regarding alternative placements, an African American middle school student was given a longer placement, by sixty days, than a white high school student for a Weapons/Dangerous Instruments offense, when the African American student's commitment of this offense was arguably less serious. These examples raise concerns for OCR that the current Handbook approach may still lead to inconsistent sanctioning practices between and within schools and continues to allow subjective factors, possibly including racial bias, to influence disciplinary decisions.

Before OCR concluded its investigation, the District asked to resolve this compliance review pursuant to Section 302. OCR determined it had identified concerns that would be appropriate to resolve through a resolution agreement.

Conclusion

The District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and all of the issues investigated. The Agreement requires the District to ensure nondiscriminatory disciplinary policies and practices for students by: reviewing its Handbook to determine if further revisions are necessary; collecting complete and appropriately detailed, accurate, and internally consistent data on all disciplinary referrals and consequences; analyzing its discipline data; continuing to train, regarding the Handbook as well as on the limited role of SSOs in disciplinary matters, all District personnel charged with making disciplinary referrals or imposing disciplinary consequences;

revising its Alternative Placement Matrix to provide specific guidance on the length of placements; providing information for students and parents or guardians on its discipline policies; conducting school discipline climate surveys and taking responsive follow-up actions as appropriate; offering compensatory services to African American students who were treated more harshly in discipline than similarly situated white students; and submitting to OCR annual reports monitoring the effectiveness of the District's efforts. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statute and regulation at issue.

This concludes OCR's investigation of this compliance review. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR, or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint against the District with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the District's cooperation in the resolution of this compliance review. If you have any questions, please contact Sarah Haake, the OCR attorney assigned to this compliance review, at 215-656-6416 or Sarah.Haake@ed.gov.

Sincerely,

/s/

Adele Rapport
Senior Legal Advisor to the Assistant Secretary
and the Deputy Assistant Secretary for Enforcement

Enclosure